IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL REVISION APPLICATION No 267 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE C.K.BUCH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

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SHRIRAM VINYL & CHEMICAL INDUSTRIES,

Versus

BISIL LPLAST LTD.

Appearance:

1. Criminal Revision Application No. 267 of 2000

MR SA DESAI for Petitioner No. 1

MS SM AHUJA for Petitioner No. 1

MR MIHIR H JOSHI for Respondent No. 1-6

MR SS PATEL, APP for Respondent No. 7

CORAM : MR.JUSTICE C.K.BUCH

Date of decision: 02/05/2002

ORAL JUDGEMENT

1. Applicant Shriram Vinyl & Chemical Industries Ltd., a fully Subsidiary Company of DCM Shriram

Consolidated Ltd., Bombay, is the original complainant of criminal complaint lodged in the Court of ld. Chief Metropolitan Magistrate, Court No.15, Ahmedabad through one Shri O.P.Gupta, duly Constituted Attorney. Complaint before the ld. Metropolitan Magistrate came to be lodged against Bisil Plast Ltd. and Directors of the Company and one of the officers of this company Mr. Jhony George who was Accounts Manager of accused no.1 Bisil Plast Ltd. at the relevant point of time, for the offence punishable under Sections 409, 420, 422 R/w Sec.34 of IPC on 27.3.1997. The said complaint was numbered as Inquiry Case No. 46/97. Complaint was supported by some documents. Considering the contents of the complaint and documents produced in support thereof and the arguments advanced by the counsel appearing for the complainant, ld. Metropolitan Magistrate directed Ellisbridge Police Station, City of Ahmedabad to investigate into the matter under Section 156(3) of CrPC. Ellisbridge Police Station, on receipt of the order passed by ld. Metropolitan Magistrate, Ahmedabad started investigating the alleged offence and according to the petitioner, certain statements were also recorded.

2. On or about 25.7.1997, respondent (original accused) moved this Court by filing Spl.Criminal Application No. 927/97 under Articles 226 & 227 of the Constitution of India and under Section 482 of CrPC praying that criminal proceedings initiated by the complainant be quashed and set aside. It was simultaneously prayed that till the hearing and disposal of the petition, there should be interim stay against the police and there should not be any further investigation against the accused. It was also prayed that order of investigation also be placed under suspension. It is not a matter of dispute that the petitioner accused was granted interim relief in that petition on 31.7.1997 and investigation came to be stayed. As per record available to this Court, it seems that this writ petition was not formally resisted, but with a view to get interim stay vacated, original complainant moved this Court by filing Criminal Misc. Application NO. 358/1998.

3. Investigating Officer, in the meanwhile, has made substantial progress in investigation and it is on record that though there was no formal vacation of interim stay, investigating agency filed its final report under Section 173(2) of CrPC and prayed for "C" summary stating that dispute between the parties is a civil dispute and no criminal offence has been made out. As the original complainant had moved the Court for vacating the interim stay and also for expeditious hearing of quashing

petition, Spl. Criminal Application No. 927/1997 came to be heard by this Court and ultimately decided vide order dated 8.5.1998 (Coram : M.H. Kadri, J). Ld. counsel appearing for the petitioner has placed reliance on some of the part of the decision in the said writ petition. It would be appropriate to refer relevant part of the decision because the Court decided to discharge Rule and to vacate the interim relief granted earlier. Conclusive part of the said decision says that :-

" Therefore, in my view, when the investigation is over, it would not be proper for me to express any opinion about the allegations made in the complaint. It is true that inherent powers under Section 482 of the Code are to be exercised in a rarest of rare cases and very sparingly. The Court will not be justified in embarking upon the enquiry as to the reliability or genuineness or otherwise of the allegations made in the first information report or the complaint. The learned Metropolitan Magistrate had not taken cognizance of the complaint, and directed investigation under Section 156(3) of the Code. It would be a futile exercise, if any opinion on merits is expressed with regard to the allegations made in the complaint at this stage when the final report is submitted by the investigating agency, because it may cause prejudice to either of the parties. Therefore, in my view, this application deserves to be rejected at this stage. It would be open to the petitioners as well as respondent no.2 to take further action when the final report is accepted or rejected by the learned Metropolitan Magistrate by initiating appropriate proceedings."

4. Ld. Metropolitan Magistrate on receipt of "C" summary report from the investigating agency, issued notice to the original complainant and after giving an opportunity of being heard to the parties and after considering the say of ld. APP, prayer of investigating officer to grant "C" summary was accepted vide order dated 23.12.1998. Feeling aggrieved by the order passed by the ld. Metropolitan Magistrate, Court No. 13, original complainant moved the Court of Sessions by filing Criminal Revision Application No. 123/1999. Copy of the revision application is available on record at page 41. The allegations in the memo of revision against investigating officer are serious in nature, but so far as present proceedings are concerned, nature of

allegations are not much relevant. Ld. Addl. Sessions Judge, Court NO.13, City of Ahmedabad, after hearing ld. counsel appearing for the revisioner Mr. Bhaumik and ld. APP Mr. A.P.Desai, allowed the revision application and set aside the order granting "C" summary passed by the ld. Metropolitan Magistrate and further directed the ld. Metropolitan Magistrate to send matter for an investigation by DCB Crime Branch, Ahmedabad or CID Branch. It was also observed that some limited time must be given to the investigating agency to submit the report. It would be appropriate to deal with the language of final order passed by ld. Sessions Judge because it gives an impression that ld. Sessions Judge has directed the ld. Metropolitan Magistrate to send the matter to totally independent investigating agency and any of the two agencies may investigate the crime denovo, though direction is not specific or limited to the effect that any of these investigating agencies shall investigate the crime further as provided under Section 173(8) of CrPC. Of course, it has been argued by ld. counsel appearing for the petitioner that the order of ld. Sessions Court is of directing the agency to investigate further in the matter and not of denovo investigation ignoring the previous exercise undertaken by the Ellisbridge Police Station. This order of ld. Addl. Sessions Judge dated 7.7.1999 came to be challenged by way of filing Criminal Misc. Application No. 4350/99 on various grounds, but after hearing the parties at length, this Court (Coram: R.P. Dholakia, J), vide order dated 1.2.2000 issued certain directions to the parties and especially to ld. Metropolitan Magistrate. It would be appropriate and beneficial to refer relevant part of the said order which says :-

"3. At the end of arguments, learned counsel appearing for the respective parties have agreed that the part of the order passed by the Court below in Criminal Revision Application No. 123/99 is required to be quashed and set aside partly as the learned Sessions Judge ought not to have specified any particular investigating agency for the task and, instead, he should have left the exercise to the learned trial Magistrate. Same way direction is required to be given to the Court below to hear the case i.e. Inquiry Case No. 46/97 from the sage when the police has submitted "C" Summary. Therefore, the Court below i.e. Metropolitan Magistrate, Court NO.15, Ahmedabad is directed to hear learned counsel appearing for the Complainant, accused and State and to pass an appropriate order after

giving them proper opportunity. In case, the learned Metropolitan Magistrate comes to a conclusion that further investigation under Section 173(8) is a must, then he is at liberty to direct any police station authority situated at Ahmedabad city, except Ellisbridge police station, to make further investigation.

4. xxx xxx xxx

5. Subject to the aforesaid directions, this application is partly allowed and part of the judgment and order dated 7.7.1999, passed by the learned Judge, Court NO.13, City Civil & Sessions Court, Ahmedabad in Criminal Revision Application No. 123/97 is hereby set aside. Rule made absolute to the aforesaid extent. "

5. These petitioners were anxious to have the order in their favour that ld. Metropolitan Magistrate shall pass appropriate order of sending the complaint for further investigation to any police agency other than the officers of Ellisbridge Police Station. It is submitted that the parties have appeared before the ld. Metropolitan Magistrate and detailed arguments were advanced and it was also attempted that the Court may even issue process considering the documents produced by the complainant ignoring "C" summary report. Ld. Metropolitan Magistrate, vide impugned order dated 31.3.2000, decided to dismiss the complaint under Section 203 of CrPC. The order dated 31.3.2000 under challenge is around 14 typed pages whereby the ld. Metropolitan Magistrate has tried to justify that "C" summary report filed by the Investigating Officer was appropriate and has held that dispute between the parties is of civil nature and there is no element of breach of trust or cheating. It has been simultaneously held by the ld. Magistrate that ingredients of any of the criminal offence mentioned in the complaint, do not emerge from the papers of investigation and evidence produced before him.

6. Relevant decision brought to the notice of ld. Metropolitan Magistrate has also been referred by him. This order has been assailed by the present petitioner mainly on four grounds; viz

(i) Ld. Metropolitan Magistrate has no jurisdiction to dismiss the complaint under Section 203 of CrPC as he was bound

by the directions issued by this Court vide order dated 1.2.2000 passed by this Court (Coram : R.P.Dholakia,J) and observations made therein;

(ii) Ld. Metropolitan Magistrate was not legally authorised to pass any order other than of sending the complaint for further investigation to any other independent agency except Ellisbridge Police Station or issuance of process exercising powers under Section 190 of CrPC and, therefore, the order is erroneous and bad-in-law;

(iii) When serious allegations were made against the officers of Ellisbridge Police Station, none of the papers of investigation including statements recorded, could have been considered by the ld. Metropolitan Magistrate for dismissing the complaint especially when "C" summary report was turned down by the ld. Addl. Sessions Judge on merits;

(iv) Element of breach of trust or cheating exfacie on record and the same are reflected from the papers produced by the complainant including the exchange of notices and the fact that by inducing one of the servants of the petitioner, the accused have tried to cause wrongful loss to the complainant to the tune of Rs. 50 lacs. The dishonest intention to have wrongful gain, by not paying consideration of PVC Resign sold, is also apparent as the share certificates which were given as instrument of security by pledging, have been sold and transferred to the complainant company.

7. It is the say of the respondents that Respondent No.1 Company had regular business dealings pursuant to the complainant supplying PVC Resin to the Respondent No.1 Company and the payments were made from time to time by the Respondent No.1 Company for such purchase. Accounts between the parties were settled in the month of July-August 1996. More than Rs. 52 Lacs were to be paid by the accused Bisil Plast Ltd. and in lieu of cash payment, the petitioner company got delivered 5 Lacs fully paid-up Equity Shares of the face value of Rs. 10/

each and after having ascertained that the market value of the share was higher than its face value, complainant Shri Ram Vinyl Industries accepted the same as consideration. The say of the complainant Company is that these shares were delivered by way of Security and not as consideration towards supply of materials, but Ld. Counsel Mr. Bhaumik, during the course of his oral submissions, has accepted that said share certificates along with duly executed transfer forms were delivered and accepted. A memorandum regarding this transaction was entered into between the parties on 7.8.1992. According to Mr. Bhaumik, this person was not authorised either as a representative or as a duly constituted attorney, to accept the share certificates along with transfer form in any way and, therefore, complainant company has terminated his services.

8. Say of the accused is that by reading the memorandum, the complainant company got issued a notice on 23.10.1996 demanding an amount of Rs. 52,55,489-00 from respondent no.1 Company. Second notice correcting earlier version was served on 8.11.1996. It is on record that both these notices are replied on 28.10.1996 and 23.11.1996 respectively.

9. Mr. Bhaumik has admitted in response to the query raised by the Court that the complainant company had filed winding up petition against the accused company Bisil Plast Ltd. on 4.2.1997 and notice was issued in the month of April 1997. It is not a matter of dispute that this winding up petition has been dismissed. It would be appropriate to refer some part of observations of the Company Court made in the Company Petition :-

" The petitioner says and submits that from the above facts, it is very clear that the respondent company has no funds to pay the dues of the petitioner and thereafter, it has committed a fraud by stating that the shares deposited with the company as security were sold to the petitioner company towards the dues and its face value should be treated as the sale value and accordingly, the respondent company had discharged its liability for the payment of Rs. 50 lacs. The petitioner submits that the aforesaid plea of the respondent company is nothing but an after thought to avoid payment of the legitimate amount due by it to the petitioner and the story of alleged sale is a concocted story to defraud the claim of the petitioner."

10. According to Mr. Bhaumik, proceedings initiated under the provisions of the Companies Act are totally independent and more than one parallel proceedings provided under the law can be initiated and there was no bar in filing criminal complaint as the present case is either a clear case of cheating or is the case of criminal breach of trust. Accused no.7, being a servant of accused no.1 Bisil Plast Ltd., complaint under Section 409 of IPC has been filed, but till today, no proceedings have been initiated against the officer or person who have accepted the transfer deeds. He was also not joined as co-accused in the complaint filed by the petitioner. In the papers of investigation submitted to the ld. Metropolitan Magistrate, it is clear that the parties were in regular commercial transactions and accused no.1 company never disputed the amount of consideration which was to be paid against the supply of material. It is the consistent stand that more than Rs. 52 Lacs were to be paid to the complainant Company and during the course of settlement of accounts, one Mr. Balram Ahuja had accepted and received on behalf of the complainant Company 5 Lac shares of Rs. 10/ each. Distinctive numbers of shares and certificates are reflected in the letter addressed to the complainant company dated 7.8.1996. Handwritten endorsement on the basis of the letter reads as under:-

"Accepted and Received for Shriram Vinyl & Chemical Industries.
sd/ Balram Ahuja
7.8.1996."

Signature of Shri Balram Ahuja is also found on the bottom of the letter along with the signature of one Shri Sanjay Shah, Director of the Company. If it is considered closely the contents of the correspondence between the parties and especially the letters written by Bisil Plast Ltd. to complainant Company and filing of criminal complaint after initiating winding up proceedings, the finding recorded by ld. Metropolitan Magistrate should be considered. Page-333 of the papers of investigation is a zerox copy of one part of the page of "The Economic Times" dated 16.1.1997. This date is relevant because on 7.8.1996, 5 Lacs shares were delivered to the complainant company and till April 1997, criminal complaint was not filed nor any winding up proceedings were initiated till February 1997. Zerox copy of the part of the page of "The Economic Times" dated 16.1.1997 indicates last score of share prices of Accused No.1 Bisil Plast Ltd. is shown as Rs. 6.25 ps. The last column indicates 52 weeks high and low price

quoted in the market and on 16.1.1997, price quoted is the lowest of last 52 weeks. It would not be probable or otherwise logical to accept that complainant Company was not aware about the work of the share of Accused no.1 Company. There is no categoric averment in the say of the complainant that on 7.8.1996, price of the share of accused company Bisil Plast Ltd. was much less than Rs. 10/ i.e. less than the face value per share and the share certificates were given and in turn were accepted by way of security and as stop gap arrangement. Ld. Metropolitan Magistrate, appreciating all relevant aspects has recorded the findings accepting "C" Summary and it would be difficult to accept that this finding was nothing but a result of non- application of mind. Though there was a stay against further investigation, Ellisbridge Police has filed "C" Summary Report.

11. Investigation carried out by Ellisbridge Police Station is incomplete, contrary to documentary evidence and manipulated and, therefore, further investigation should be made by the independent agency like CID Crimes or DCB, was the prayer made by the petitioner before the Sessions Court in the above-referred Criminal Revision Application. Prior to the criminal revision application filed before the Court of Sessions, the petitioner Company attempted to get interim stay against the investigation was made by moving Misc. Criminal Application No. 358/98, it would be relevant to quote relief prayed by the petitioner Company in the aforesaid application which reads as under:-

"(a) to vacate the ex-parte stay of investigations embarked upon in Investigation & Report Case No. 46 of 1997 before the Ld. Metropolitan Magistrate, Ahmedabad, which was snatched from this Hon'ble Court by the petitioners (orig.accused) on or around July 31,1997;

(b) direct the Director, State (CID) to carry out the investigations in I & R Case No. 46 of 1997 in which the petitioners are the accused, and to submit their Report, to the trial Court within a time-bound frame;

(c) expedite hearing of Spl. Criminal Application No.927 of 1997 frivolously lodged by the petitioners in the cae (who are the orig. Accused);

(d) levy exemplarary costs on the petitioners for misguiding this Hon'ble Court and holding back relevant details and information vis-a-vis the investigations which are already well underway;

(e) costs;

(f) any other and further orders as may be expedient in the interest of justice, equity, good conscience and fair play."

12. So, till filing of above criminal revision application, no grievance or dissatisfaction was expressed against methodology and the procedure adopted by the Ellisbridge Police Station while investigating in connection with the complaint filed by the petitioner Company. But for formal vacation of the interim stay granted by this Court in Spl.Criminal Application No. 927/1997, Ellisbridge Police submitted report under Section 173(2) of CrPC going against the interest of the complainant. On one hand, complainant submits that this is a clear case of fraud and criminal breach of trust by Bisil Plast Ltd. and its directors and Bisil Plast Ltd. is also liable for winding up for non-payment of alleged dues and it was not able to pay value of the goods supplied to the large sum worth more than Rs. 52 Lacs, but it is on record that on 23.7.1996, a cheque of Rs. 2,84,194-00 was issued by Bisil Plast Ltd. to the complainant company and as referred above, 5 lacs fully paid up equity shares of face value of Rs.10/ each worth Rs. 50 Lacs were physically handed over on 7.8.1996. This delivery whether was a pledge as security towards the outstanding amount and whether it was agreed that the complainant company will be at liberty to sell the equity shares at the risk of the Bisil Plast Ltd. or it was against the settlement of accounts, is the basic controversy which Ellisbridge police seems to have tried to resolve. Investigating agency was supposed to find out whether any element of criminality is peeping out from this transaction or not and ultimately "C" Summary was filed. Date of filing of complaint is 27.3.1997. Revision Application preferred before the Court of Sessions has been disposed of by ld. Addl. Sessions Judge by a reasoned order wherein certain facts are also narrated, but it would not be correct or legal to say that one party if had taken some tricky benefit or had taken some advantage, all such advantages taken would not become automatically a criminal wrong and such situation

may give rise to a dispute, but when there is no element of criminality, such dispute can be termed as "civil dispute". Filing of "C" Summary report by the Investigating Officer may be violative of High Court's prohibitory order, but this violation can be said to be actionable wrong so far as the Court issuing prohibitory order and the party who has obtained such prohibitory order are concerned. In my opinion, it is not necessary to elaborate this aspect, but as the same involves many other issues factual as well as legal, it would be proper to observe that at least party who was kin to get interim stay vacated and praying completion of investigation at the earliest, would not have tried to get the order granting "C" Summary report set aside on the ground that police has wrongly submitted the said report though there was a stay by this Court against the investigation. This is important when this ground was argued before the Court of Sessions while arguing revision application as accused were not present. I agree that accused are not required to be heard at the time when "C" Summary report was under scrutiny, but when the report has been accepted and ld. Metropolitan Magistrate had granted "C" Summary report and original accused persons were joined as party, the observations if made by the ld. Addl. Sessions Judge, commenting either upon the conduct of the accused or investigating agency or on factual aspect reflected from the police report, would not be binding to the party who was not offered an opportunity. Ld. Addl. Sessions Judge of City of Ahmedabad (Court No.13), while disposing of criminal revision application, has set aside the order granting "C" Summary report and further directed that investigation in the matter be handed over to DCB Crimes, Ahmedabad or CID Crimes etc. This order was challenged by way of Cri. Revision Application invoking inherent powers of the Court and I have referred relevant part of the order herein above. Before passing of the order, at the end of arguments, parties had agreed that part of the order passed by the revisional court while dealing with Cri. Revision Application No. 123/97 requires to be quashed and set aside, but it would not be correct to say that parties had agreed in turning down the entire "C" Summary report submitted by the investigating agency and that they had also agreed to the effect that the case was required to be investigated afresh or any further investigation is warranted. Mr. A.D. Shah, ld. counsel appearing for the opponents accused has resisted the submission advanced on behalf of the petitioner that only the order passed by ld. Addl. Sessions Judge was set aside whereby he had specified a particular investigating agency for the task and ld. Metropolitan Magistrate only was offered opinion to select the agency

to investigate the offence further. According to Mr. Shah, entire order indicates that the order passed by ld. Addl. Sessions Judge being the order behind the back, the order passed by the ld. Addl. Sessions Judge setting aside the order of ld. Metropolitan Magistrate accepting "C" Summary was set aside and action of ld. Addl. Sessions Judge directing ld. Metropolitan Magistrate to handover further investigation to any of the two agencies named in the order with appropriate directions to complete the investigation in stipulated period, was set aside and it was agreed between the parties that everything should be left to the ld. Metropolitan Magistrate. Mr. Shah has rightly pointed out that ld. Metropolitan Magistrate, Court No.15, Ahmedabad was, therefore, directed to hear the ld. counsel appearing for the complainant, accused and the State and to pass appropriate order after given them proper opportunity and in case ld. Metropolitan Magistrate comes to a conclusion that further investigation under Section 173(8) of CrPC is must, than in that case, he can order so and he was further granted liberty to direct any police authority situated in Ahmedabad city to investigate except Ellisbridge Police Station. It is rightly submitted by ld. counsel Mr. Shah that therefore the order accepting "C" Summary report by ld. Metropolitan Magistrate was set aside and ld. Metropolitan Magistrate was directed to decide afresh after offering an opportunity to the parties. While exercising inherent powers, the Court had not expressed any opinion as to the merits or demerits of investigation carried out by Ellisbridge Police Station authority.

13. In view of above facts and circumstances, it can be legitimately inferred that on the day on which share certificates worth Rs. 50 Lacs were delivered in the month of August 1996, there was no grievance from the complainant side. This Court (Coram: M.H. Kadri,J), while dealing with Spl.C.A. No. 927/97, referred one aspect i.e. fall of share price of Bisil Plast Ltd. The Court has observed that " it appears that prices of the share might have gone down and therefore there was exchange of notices between petitioner no.1 company (complainant) and respondent no.2." Shares of a listed company if loose price, then recipient of such shares whether can be said to be a person cheated, is the question. For the sake of arguments even if it is accepted that these share certificates were delivered and pledged with as security with a liberty to realise legitimate dues against the supply of material, than complainant company or say material supplier company

could have tried to mitigate the loss and could have claimed only the amount of difference, is the another question which emerges from the arguments advanced by ld. counsel Mr. Bhaumik. I am not inclined to accept the say of Mr. Bhaumik that observations made by the Company Court in winding up petition are totally irrelevant and ld. Metropolitan Magistrate is not suppose to even look at it being an independent and parallel proceedings.

14. The above-referred order passed by this Court while dealing with Criminal Misc. Application No. 4350/99 indicates that:-

(i) The court on consensus has decided to quash and set aside the order passed in Criminal Revision Application No. 123/1999;

(ii) The Court allowed said Revision Application partly and observed that the ld. Sessions Judge ought not to have specified a particular investigating agency for the task of investigation and such exercise could have been left to the trial Court;

(iii) Parties had also agreed that in the same way, appropriate directions should be given to the Court below;

(iv) The Court below was directed to hear the case viz. Criminal Case No. 461/97 from the stage when police had submitted "C" summary;

(v) The Court had directed the ld. Metropolitan Magistrate, Court NO.15, Ahmedabad to hear the ld. counsel appearing for the complainant, accused and the State and to pass appropriate orders after giving the proper opportunity;

(vi) Ld. Metropolitan Magistrate was further asked that if he comes to a conclusion that further investigation under Section 173(8) of CrPC is must, then he would be at liberty to direct any police station authority to make further investigation;

(vii) Decision whether further investigation is must or not, was to be arrived at after hearing ld. counsel appearing for the respective parties and ld. Magistrate was further directed to pass appropraite order before the end of March,2000.

15. The above points are reflected in para-2 of the order. This should be read in reference to all the reliefs prayed by the petitioner. It is rightly argued that report asking "C" Summary was not turned down. It is also not the order that the matter is sent back only for the purpose to decide other appropriate investigating agency except the authority of Ellisbridge Police Station. So, it would not be proper to infer that ld. Metropolitan Magistrate was not authorised to pass any order other than directing further investigation through other appropriate investigating agency. Both the parties, it seems, were hopeful to get some favourable result if submissions are heard denovo on the strength of the papers available on record including the report prepared by the Ellisbridge Police Station and the evidence produced by the complainant himself at the time of filing complaint before the ld. Metropolitan Magistrate. Undisputedly, complaint was filed in the court of ld. Metropolitan Magistrate, but in view of nature of dispute and the allegations made in the complaint, ld. Metropolitan Magistrate had not decided to hold inquiry of his own nor he issued process after verifying the complaint even though documentary evidence was produced with the complaint. The Court decided to send complaint for investigation under Section 156(3) CrPC. After this order, the concerned Investigating Agency if would have filed chargesheet, then such chargesheet could have been accepted and criminal case could have been registered. Ld. Metropolitan Magistrate, on receipt of the chargesheet, can refuse to accept it if Court finds it incomplete or there are proper grounds for such refusal. Investigating Agency has not filed chargesheet in the present case, but has submitted report under Section 173(2) of CrPC and has prayed for "C" Summary with reasons. Acceptance of this report is obviously subject to the submissions of the complainant and after hearing the complainant, "C" Summary report was filed by the Investigating Officer can be accepted. At this stage, complainant can convince the Court that this is a case of incomplete and/or unfair investigation and, therefore, "C" Summary report should not be accepted and investigating agency may be asked to investigate further. It was possible to decide that further investigation may be carried out by the officer other than the one who has submitted "C" Summary report. It can also be prayed that the papers of investigation disclose a particular offence and, therefore, accepting the report the Court should issue process under Section 190 of CrPC. When this prayer is being made, the Court can obviously consider whether the complaint requires to

be dismissed and if answer is in affirmative, then it can pass appropriate order provided under Section 203 of CrPC. Plain reading of the order passed by this Court clearly indicates that this Court has offered an opportunity to the complainant again so that complainant can convince the ld. Metropolitan Magistrate not to accept "C" Summary report and to pass appropriate orders that may be the order of further investigation by other independent agency or even to issue process directly under Section 190 of CrPC. If the ld. Metropolitan Magistrate could have issued process, even than the order could not have been said to be passed without jurisdiction or in violation of the directions issued by the Court or against the observations made by the Court of Sessions in the above -referred Revision Application. As Ld. Metropolitan Magistrate was obliged to pass the order of further investigation under Section 173(8) of CrPC., if he reaches to a conclusion that such further investigation is a must. Ld. Metropolitan Magistrate had offered full opportunity to the counsel appearing for the parties and to the ld. PP. Some statements made by ld. PP during the course of hearing of the Revision Application No.123/99, would not change the merits of the present case. Complainant side seems to have taken task very seriously and has tried to convince the ld. Metropolitan Magistrate to reach to the conclusion that either the case is worth issuance of process under Section 190 CrPC or it is the case of further investigation under Section 173(8) of CrPC. When deliberations were made before the ld. Metropolitan Magistrate while drawing the sequence, it seems that ld. Metropolitan Magistrate was satisfied and he found that "C" Summary report filed by the Ellisbridge Police seems to be correct. So, criticism on this very report by the Sessions Court by itself would not make order of ld. Metropolitan Magistrate bad-in-law. The present petitioner is supposed to convince the Court that report asking "C" Summary filed by the Ellisbridge Police is the result of improper, incomplete and/or unfair investigation. There are clear elements of criminality qua one of any of the offences mentioned in the complaint, punishable under IPC.

16. I have seen papers of investigation and documents produced even by the complainant, exchange of notices and correspondence and some important and relevant part of the documents referred to herein above. So, it is not required to repeat all these aspects, but it is pertinent to note that the statement of Mr. Balram Ahuja recorded by police confirms that he was asked to go to the accused; especially accused no.1 company; with regard to

the recovery of the amount of more than Rs. 52 Lacs.He has mentioned several dates of visit to Bisil Plast Ltd. The dates mentioned in the statement materially tally with the correspondence between Bisil Plast Ltd. and the complainant. He was serving since years with the complainant company and his status was of Deputy Manager and after getting confirmation only, he had accepted share certificates of the face value of Rs. 50 Lacs. It is not satisfactorily established or even is clear from the record that on the day of transaction i.e. on 7.8.1996, market price of the listed share of Bisil Plast Ltd. was less than its face value. With all these facts and circumstances and evidence collected by the Investigating Officer, ld. Metropolitan Magistrate decided to accept the "C" Summary report. This Court had never said while passing the above order dated 1.2.2000 that report filed by Ellisbridge Police Station in any case should not be accepted. Earlier order accepting "C" Summary report and turning down the complaint was set aside. The Court was not without report. The parties were asked to make their deliberations and submissions on the complaint, papers produced by the complainant along with complaint and the papers of investigation submitted by the Ellisbridge Police. So, the order passed by the ld. Metropolitan Magistrate cannot be said to be the order passed ignoring two different orders passed by the Superior Courts. Therefore, I am not in agreement with the submissions made by ld. counsel Mr. Bhaumik that the order passed by the ld. Metropolitan Magistrate is devoid of authority and the same is passed only with a view to save the face of Ellisbridge Police or to confirm the earlier views expressed by the very Court.

17. The fact of terminating the services of Mr. Balram Ahuja by the complainant does not add any strength to the case of the complainant. Though Mr. Bhaumik has submitted that complainant has not named Mr. Ahuja as the accused in the complaint, however, Ellisbridge Police should have joined him as an accused at the time of filing of the chargesheet. Statement of Mr. Balram Ahuja, on the contrary, cuts the case of the complainant who is Bombay-based intelligent officer, at the relevant point of time, serving with complainant Company at Ahmedabad and how a reasonable and prudent Judge can accept that he was befooled by the accused persons and his signature was obtained forcibly on the letter typed in English. Tenor of the statement of Mr. Ahuja indicates that he speaks for the complainant company as if he is not even knowing English language proper or text of the letter and the correspondence signed by him.

18. The ratio of the decision in the case of M/s Jayant Vitamins Ltd. v/s Chaitanyakumar & Anr. reported in (1992) 4 SCC 15, squarely helps the accused. Of course, the Apex Court was dealing with the case in reference to the Scheme of Section 482 of CrPC, but the observations of the Apex Court made in para-4 of the said decision go to the root of the present case. Apex Court, in para-4, has said :-

" The investigation into an offence is a statutory function of the police and the superintendence thereof is vested in the State Government and the Court is not justified without any compelling and justifiable reason to interfere with the investigation."

19. Ld. counsel Mr. Bhaumik appearing for the petitioner has placed reliance on number of decisions, but firstly, I would like to refer to those decisions :-

(i) Rajesh Bajaj v/s State NCT of Delhi & Ors. 1999 Cri.LJ 1833 (SC);

(ii) Rupan Deol Bajaj v/s KPS Gill, 1996 Cri.LJ 281 (SC);

(iii) M/s Jayant Vitamins Ltd. v/s Chaitanyakumar & Anr. (1992)4 SCC 15;

(iv) Balwant Singh v/s State of Punjab, AIR 1987 SC 1080;

(v) H.S. Bains v/s State (Chandigarh), 1980 Cri.LJ 1308 (SC);

(vi) State of Gujarat v/s M.J. Porwal & Anr., AIR 1987 SC 1321;

(vii) Karnel Singh v/s State of M.P., AIR 1995 SC 2472;

(viii) M. Krishnan v/s Vijay Singh & Anr., AIR 2001 SC 3014;

(ix) Kari Chaudhary v/s Most. Sitadevi & Ors., Crimes 12 SC 1-2002.

I have simultaneously considered the ratio of the following decisions :-

(i) All India Institute of Medical Sciences Employees Union (Regd.) Through its President v/s Union of India and Others, reported in 1997 SCC (Cri.) 303;

(ii) B.Ramesh & Ors. v/s State of Gujarat, reported in 1997(2) GLH 1655;

(iii) Yadabula Lawrence (A-1) v/s State of Andhra Pradesh, reported in 1997 Cri.LJ Page 4580;

20. In the case of Rajesh Bajaj (supra), the Court has observed that the facts narrated in the complaint if reveals a commercial transaction or money transaction, would hardly be a reason for holding that the offence for cheating would elude from such a transaction. The facts of the cited case are totally different and would not help the complainant in view of the facts of the present case. Ratio of the decision in the case of Rupan Deol Bajaj (supra) says about the principle and even ld. counsel Mr. A.D.Shah has not disputed that it was open for the ld. Metropolitan Magistrate was authorised to reject "C" Summary report. In the case of M/s Jayant Vitamins Ltd. (supra), it is observed that the investigation into an offence is a statutory function of the police and the superintendence thereof is vested in the State Government. In the present case, nobody has tried to interfere with the investigation. On the contrary, the party aggrieved before this Court is the very party which had prayed that investigating agency must be directed to continue with the investigation and interim stay granted by this Court should be vacated at the earliest. Facts of the case of Balwant Singh (supra) are totally different. In the aforesaid case, the police has tried to withhold the report of Chemical Examiner and the Court was not satisfied with the said decision of the police qua the crime committed. The case of H.S. Bains (supra) only indicates that irrespective of "C" Summary or "B" Summary report, still Magistrate can take cognizance and issue process." In the present case, this attempt has been made by the complainant after the order passed by this Court on 1.2.2000, but the complainant has failed. It would be pertinent to quote the ratio of the decision of the Apex Court in the case of M.J. Porwal & Anr. (supra), wherein the Apex Court has said:-

" Ends of justice are not satisfied only when the Accused in a criminal case is acquitted. The Community acting to the State and the Public Prosecutor is also entitled to justice. The

> cause of the Community deserves equal treatment at the hands of the Court in the discharge of his judicial functions. The Community or the State is not a personna non-grata whose cause may be treated with desdain. The entire community is aggrieved if the economic offender who ruin the economy of the State are not brought to book. A murder may be committed in the heat of moment upon passions being arosed. An economic offence is committed with cool calculation and deliberate design with an eye on personal profit regardless of the consequences to the Community. A disregard for the interest of the Community can be manifested only at the cost of forfeiting the trust and faith of the Community in the system to administer justice in an even handed manner without fear of criticism from the quarters which view white-collar crime with a permissive eye unmindful of the damage done to the National Economy and National Interest."

21.(i) The above decision deals with sensitive part of investigating agency in the justice delivery system. The principle is well accepted especially when economic offender or white-collar criminal is indulging by applying certain tricks. However, in the present case, two business organisations i.e. company are before the Court and one of them had even resorted to winding up proceedings against the other under the provisions of the Companies Act and complainant company came with an excuse that his responsible officer was cheated and unauthorised officer was given share certificates worth Rs. 50 Lacs without joining that officer as an accused. Mr. Bhaumik, by placing reliance on the decision of Karnel Singh (supra), has tried to satisfy this Court that present case is of defective, unfair and dishonest investigation completed hurriedly despite the stay granted by this Court was operating and "C" Summary report was submitted despite aforesaid prohibitory order. The Investigating officer has not been taken to task for violating Court's order. On the contrary, complainant himself, by investigation order, has agreed to argue denovo before the ld. Metropolitan Magistrate and had accepted to make all endeavour to see that appropriate orders i.e. issuance of process or issuance of directions for further investigation through other investigating agency, can be obtained. But on failure, this Court is approached directly to get the order quashed. In the case of M.Krishnan (supra), the Court has observed that "if mere pendency of a suit is made a ground for quashing the criminal proceedings, the

unscrupulous litigants, apprehending criminal action against them, would be encouraged to frustrate the course of justice and law by filing suits with respect to the documents intended to be used against them after the initiation of criminal proceedings or in anticipation of such proceedings." This ratio clearly indicates that Apex Court has found element of criminality in the transaction and considered civil proceedings initiated as irrelevant. On the contrary, in the present case, winding up proceedings were initiated by the complainant company itself and ultimately, the same are dismissed. The say of the respondents accused is that in the present case, when there is no element of criminality, the question of breach of trust does not arise at all. For the sake of arguments even if it is accepted that share certificates were given as pledge and now the accused persons have taken a stand that the same were handed over against the consideration or as consideration, whether would give rise to any ingredient of cheating as defined under Section 415 of IPC, is the issue raised. As observed earlier, the complainant had never averred in its notice that if the consideration amount against supply of material is not received, then pledged share certificates shall be sold and they will be responsible for the deficit amount. Delay in filing complaint in the Court of ld. Metropolitan Magistrate also can be taken into account when transaction between the parties is under primary footing.

(ii) Decision in the case of Shri Bhagwan Samardha Sreepada Vallabha Venkata Vishwandadha Maharaj v/s State of Andhra Pradesh, reported in AIR 1999 SC 2332, only says that reinvestigation under Section 173(8) of CrPC can be ordered by the ld. Magistrate without offering an opportunity of hearing to the accused even after receipt of first report of police. But in the present case, the complainant had agreed that accused side may be heard and the accused have pointed out that element of fraudulent representation or cheating is missing in the present case.

(iii) In the case of Sampat Singh & Others v/s State of Haryana & Others, reported in (1993) 1 SCC 561, it is held that the Court of competent jurisdiction is obliged to decide on proper applicaton of mind whether to accept or reject the report filed under Section 173 of CrPC and, therefore, this Court had directed the ld. Metropolitan Magistrate to hear the parties on merits and decide whether further investigation looks must.

(iv) The obligation on the part of ld. Metropolitan

Magistrate was that if he intends to reject the objection raised by the original complainant against the police report submitted recommending discharge of the accused or filing "A", "B" or "C" Summary report, then he must record reasons. In absence of reasons, or any cogent or convincing reasons, the order accepting such police report is liable to be set aside. In my opinion, decision of the ld. Metropolitan Magistrate in the present case accepting "C" Summary report is reasoned order rejecting the resistence raised on behalf of the complainant. So, the ratio of the decision in the case of Rupan Deol Bajaj (supra), on the contrary would help the other side.

(v) The petitioner complainant had failed even to convince this Court that this is a clear case of either fraud or resulting into cheating punishable under Section 420 of IPC or a criminal breach of trust, otherwise, the ld. Metropolitan Magistrate should not have been asked to take cognizance under Section 190(1)(b) of CrPC or could have issued appropriate directions.

(vi) In view of the decision in the case of G. Sagar Suri & Anr. v/s State of U.P. & Ors.,reported in JT 2000(1) SC 360, the say of Mr. Bhaumik is not accepted that rejection of a quashing petition under Section 482 of CrPC would come in the way of the accused persons in getting favourable order either of discharge or of dropping of proceedings after completion of investigation.

22. The submission of Mr. Bhaumik that when quashing proceedings initiated by the accused have been turned down by this Court when Spl.Criminal Application No. 927/97 has been dismissed, the ld. Metropolitan Magistrate should have asked the accused persons to face the fair trial. But, this submission is not convincing as careful reading of the order passed by this Court while dealing with above-referred Spl.Criminal Application, has not passed any comments on merits of the complaint filed. So, the quashing Court has not observed anything qua the merits of the complaint. On the contrary, as the police had submitted report before the ld. Magistrate, dispute was rejected without observing anything and holding that it may cause prejudice to either side while dealing with the matter on merits before the ld. Magistrate.

23. I am not in agreement with the submission made by Mr. Bhaumik that the impugned order passed by the ld. Magistrate is overriding earlier orders passed by this Court or passed by the ld. Sessions Court. On the other

hand, the say Mr. A.D. Shah and the finding recorded by the ld. Metropolitan Magistrate is supported by the ratio of the decision in the case of Sunil Kumar v/s M/s Escorts Yamaha Motors Ltd., reported in 2000 Cri.LJ P.174. The Apex Court, in the aforesaid case, has observed as under:-

" Bearing in mind the law laid down by this Court in the cases referred to earlier and the contentions raised by the learned counsel appearing for the parties and on examining the allegations made in the FIR, we are persuaded to accept the submission of Mr. H.N. Salve and Mr. Arun Jattley, appearing for the respondents that necessary ingredients of the offence of cheating or criminal breach of trust have not been made out and on the other hand the attendant circumstances indicate that the FIR was lodged to pre-empt the filing of the criminal complaint against the informant under S.138 of the Negotiable Instruments Act. The High Court, therefore, was well within its power in quashing the FIR as otherwise it would tentamount to an abuse of process of Court. We, therefore, see no justification for our interference with the impugned decision of the High Court in exercise of powrs under Article 136 of the Constitution."

24. Having considered the impugned order passed by the ld. Metropolitan Magistrate, this Court is of the view that ld. Metropolitan Magistrate has taken into account the facts available on record in correct perspective and has also considered relevant legal position and the ld. Metropolitan Magistrate has tried to distinguish all the decisions cited by the ld. counsel appearing for the complainant and the Court has rightly placed reliance on the decisions reported in AIR 1980 SC 1883 (H.S. bains (supra), and in the case of A.I.Panian, Shanmugam & Ors. v/s State of Andhra Pradesh, reported in 1991 SCC (Cri.) Page-84 and has positively concluded that the transaction is commercial and element of criminality is missing. It is established proposition of law that unless finding of the subordinate court is patently illegal or perverse and if the same is not reversed and corrected, there shall be miscarriage of justice, only then revisional jurisdiction should be exercised. None of these elements are found in the order passed by the ld. Magistrate e and, therefore, this Revision Application deserves to be dismissed.

25. For the reasons aforesaid, this Criminal Revision

Application is dismissed. Rule is discharged.

2.5.2002   [C.K. BUCH, J]
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